

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JASON COMITZ,

Petitioner,

v.

No. 1:23-cv-00241-KWR-DLM

ATTORNEY GENERAL FOR THE
STATE OF NEW MEXICO, FNU
VIGIL-RICHARDSON,

Respondents.

ORDER CONFIRMING VOLUNTARY DISMISSAL

THIS MATTER is before the Court on Petitioner Jason Comitz's letter, filed July 13, 2023. (Doc. 4) (the "Letter"). In the Letter, Comitz states that he mistakenly filed his Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 and that he is currently pursuing state habeas relief. (*See* Doc. 1, filed March 21, 2023). The Court construes the Letter as a notice of voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i). That rule gives a petitioner an absolute right to dismiss an action without prejudice "before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i).

Respondent has not yet entered an appearance in this case. Therefore, pursuant to the Letter, the Court will dismiss the Petition without prejudice and close this case. The Petition filed March 21, 2023, will not count as Comitz's "first" habeas action, for purposes of the restrictions on second/successive habeas claims.

IT IS THEREFORE ORDERED that this action is **DISMISSED WITHOUT PREJUDICE** pursuant to Petitioner's Letter of voluntary dismissal.

IT IS FURTHER ORDERED that this Order will not affect Petitioner's right to file a

“first” Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 in the future.

The Court will enter a separate judgment.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE